able conditions than those in the ship's articles which they signed under foreign law, upon joining the vessel in a foreign port. In *McCulloch* an American seamen's union petitioned for a representation election among the foreign crew members of a Honduran-flag vessel who were already represented by a Honduran union, certified under Honduran labor law. Again, in *Incres* the picketing was by an American union formed "for the primary purpose of organizing foreign seamen on foreign-flag ships." 372 U. S., at 25–26. In these cases, we concluded that, since the Act primarily concerns strife between American employers and employees, we could reasonably expect Congress to have stated expressly any intention to include within its coverage disputes between foreign ships and their foreign crews. Thus we could not find such an intention by implication, particularly since to do so would thrust the National Labor Relations Board into "a delicate field of international relations," *Benz,* 353 U. S., at 147. Assertion of jurisdiction by the Board over labor relations already governed by foreign law might well provoke "vigorous protests from foreign governments and . . . international problems for our Government," *McCulloch,* 372 U. S., at 17, and "invite retaliatory action from other nations," *id.*, at 21. Moreover, to construe the Act to embrace disputes involving the "internal discipline and order" of a foreign ship would be to impute to Congress the highly unlikely intention of departing from "the well-established rule of international law that the law of the flag state ordinarily governs the internal affairs of a ship," a principle frequently recognized in treaties with other countries. *Ibid.*

The considerations which informed the Court's construction of the statute in the cases above are clearly inapplicable to the situation presented here. The par-

ticipation of some crew members in the longshore work does not obscure the fact that this dispute centered on the wages to be paid American residents, who were employed by each foreign ship not to serve as members of its crew but rather to do casual longshore work. There is no evidence that these occasional workers were involved in any internal affairs of either ship which would be governed by foreign law.[4] They were American residents, hired to work exclusively on American docks as longshoremen, not as seamen on respondents' vessels. The critical inquiry then is whether the longshore activities of such American residents were within the "maritime operations of foreign-flag ships" which *McCulloch*, *Incres*, and *Benz* found to be beyond the scope of the Act.

We hold that their activities were not within these excluded operations. The American longshoremen's short-term, irregular and casual connection with the respective vessels plainly belied any involvement on their part with the ships' "internal discipline and order." Application of United States law to resolve a dispute over the wages paid the men for their longshore work, accordingly, would have threatened no interference in the internal affairs of foreign-flag ships likely to lead to conflict with foreign or international law. We therefore find that these longshore operations were in "commerce" within the meaning of § 2 (6), and thus might have been subject to the regulatory power of the National Labor Relations Board.[5]

---

[4] We put to one side situations in which the longshore work, although involving activities on an American dock, is carried out entirely by the ship's foreign crew, pursuant to foreign ship's articles.

[5] The Board has reached the same conclusion in similar situations. See, *e. g.*, *International Longshoremen's & Warehousemen's Union, Local 13*, 161 N. L. R. B. 451 (1966); *Marine Cooks & Stewards Union*, 156 N. L. R. B. 753 (1966); *New York Shipping*

The jurisdiction of the National Labor Relations Board is exclusive and pre-emptive as to activities which are "arguably subject" to regulation under § 7 or § 8 of the Act. *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236, 245 (1959). The activities of petitioner in this case met that test. The Union's peaceful primary picketing to protest wage rates below established area standards arguably constituted protected activity under § 7. See *Steelworkers* v. *NLRB*, 376 U. S. 492, 498–499 (1964); *Garner* v. *Teamster Union*, 346 U. S. 485, 499–500 (1953).

Reversed.

Association, Inc., 116 N. L. R. B. 1183 (1956). Cf. *Uravic* v. *Jorka*, 282 U. S. 234 (1931).

Our conclusion makes it unnecessary to consider petitioner's further contention that in the absence of any evidence of an illegal objective, prohibition of peaceful picketing to publicize substandard wages deprived petitioner of freedom of speech in violation of the First and Fourteenth Amendments.

SUPREME COURT OF THE UNITED STATES

No. 231.—October Term, 1969

International Longshoremen's Local 1416, AFL–CIO, Petitioner, *v.* Ariadne Shipping Company, Limited, et al.	On Writ of Certiorari to the District Court of Appeal of Florida, Third District.

[March 9, 1970]

Mr. Justice White, with whom The Chief Justice and Mr. Justice Stewart join, concurring.

I agree with the majority that the Florida courts were in error to conclude that the National Labor Relations Act does not govern relations between the operators of foreign-flag vessels and the American longshoremen who work on such vessels while they are in American ports. However, I would not rest reversal on the conclusion that the union's conduct in this case was " 'arguably subject' to regulation under § 7 or § 8 of the Act." The union's picketing was clearly not proscribed by any part of § 8 of the Act. The only possible dispute could be over whether the picketing was activity protected by § 7 of the Act or whether the picketing was neither protected nor prohibited by the Act and therefore was subject to state regulation or prohibition. If the National Labor Relations Act provided an effective mechanism whereby an employer could obtain a determination from the National Labor Relations Board as to whether picketing is protected or unprotected, I would agree that the fact that picketing is "arguably" protected should require state courts to refrain from interfering in deference to the expertise and national uniformity of treatment offered by the NLRB. But an employer faced with

"arguably protected" picketing is given by the present federal law no adequate means of obtaining an evaluation of the picketing by the NLRB. The employer may not himself seek a determination from the Board and is left with the unsatisfactory remedy of using "self help" against the pickets to try to provoke the union to charge the employer with an unfair labor practice.

So long as employers are effectively denied determinations by the NLRB as to whether "arguably protected" picketing is actually protected except when an employer is willing to threaten or use force to deal with picketing, I would hold that only labor activity determined to be actually, rather than arguably, protected under federal law should be immune from state judicial control. To this extent *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236 (1959), should be reconsidered. I concur in the Court's judgment in this case because in my view the record clearly indicates that the peaceful, nonobstructive picketing on the public docks near the ships was union activity protected under the National Labor Relations Act. See *Garner* v. *Teamsters Local 776*, 346 U. S. 485, 499–500 (1953).